

IN THE HIGH COURT OF GUJARAT
AHMEDABAD

CIVIL REVISION APPLICATION NO.1983 OF 1995
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CIVIL REVISION APPLICATION NO. 1984 OF 1995

Date of Decision: 01 March, 1996

For Approval and Signature:

Hon'ble Mr. Justice : S.D. SHAH

1. Whether Reports of Local Papers may be allowed to see the judgments?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy ..
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Mrs. Ranjana B. Patel for petitioners
Mr. Uday Bhatt, AGP for respondents

Coram: S.D. SHAH, J.
Date : 1.03.1996

COMMON ORAL JUDGMENT:

1. RULE. Mr. Uday Bhatt, learned AGP waives service of Rule on behalf of the respondents. With the consent of the learned advocates appearing for the parties, these two Civil Revision Applications are heard together and

are finally disposed of by this common judgment.

2. In Land Reference Case No. 2001 of 1992 and 1967 of 1992 applications were tendered by the claimants for the purpose of permitting them to reopen their evidence and to examine witnesses on their part to prove the contents of two registered sale deed being Exhibit-71 in Land Reference Case No. 2001 of 1992 and being Exhibits No. 60 and 61 in Land Reference No. 1967 of 1992. Prior thereto, the evidence on the side of the claimant was closed and the State Government has also examined its witnesses and its evidence was also closed. However, the fact remains that the aforesaid two registered sale deed were already produced on record before the Court and it appears that they were already exhibited but, they were not duly proved as required by the Law of Evidence. At this stage, applications were moved, being Exhibits 64 and 67 in Land Reference Case No. 1967 of 1992 to permit the claimants to reopen their evidence to prove the aforesaid documents by calling executant of the documents and/or witnesses and application for issuance witness summons was also given. Similarly, in Land Reference Case No. 2001 of 1992 application at Exhibit 75 and 78 were given which are of identical nature requesting the court to permit the claimants to reopen their evidence and to issue witness summons to the executant of the documents and/or witnesses to prove the documents.

3. The trial court has by order dated 19th September, 1995 in both the cases, rejected the applications on the ground that the document in question was already produced by the opponent and that relying on such document the Land Acquisition Officer has fixed the market value of the land. Therefore, in reference preferred by claimants under Section 18 of the Act, it was for them to assail the document and to explain the circumstances under which document was executed or how it was not bona fide. When their evidence was recorded, they have failed to prove or explain such document.

4. It is not disputed that such documents were sought to be produced and proved when the evidence of the opponent was being recorded. Prior thereto before Land Acquisition Officer only documents were produced by the opponent. The claimants therefore were not under obligation to disprove or explain the circumstances under which such documents were executed. Once the opponent duly got proved and established such documents as evidencing genuine transaction of sale, the claimants were faced with the question of explaining the circumstances under which the documents were executed or

to explain as to how such documents did not truly disclose a bona fide transaction of sale.

5. The case of the applicants that they never knew about the existence of such documents and that they were taken by surprise, was rightly not believed by the Court. The Court further found that the claimants cannot now be permitted by examining the executant of the documents to explain the circumstances under which the documents came to be executed and secondly on the ground that such documents could have been very well explained by them at the time when their evidence was recorded. The claimants however failed to lead any evidence with regard to such documents on which opponents were to rely and which they were to produce and prove during inquiry under Sec. 18 of the Act.

4. These are the orders which are under challenge in these two Civil Revision Applications. It is undoubtedly true that ordinarily after the evidence of both the parties is closed, the court should be loath to permit the other party to reopen his evidence so as to improve its case or so as to defeat or deny the case already proved and made out by the defendant or opponent. To permit the party to do so would in substance amount to permitting it to plug the loopholes in its case or to destroy the case already established by the opposite party. This practice is to be discouraged and in civil trials the courts have deprecated such practice. A party cannot be permitted to improve its position or to destroy the case of the opposite party when its own evidence is closed. However, in the land acquisition proceeding, the attempt of the Land Reference court is always to determine the market price of the land in question based on the relevant factors which are very well established by this time by the Apex Court such as the area of the land, the nature of the land, the locality of the land, whether the land is irrigated or non-irrigated, whether there is any developmental industrial or commercial potentiality of the land. The comparative sale instances of the parcels of land situated in the vicinity of the land and their proximity to the date of issuance of Sec. 4 notification is another method. In cases of agricultural parcels of land with no developmental or commercial potentiality the courts of Law have resorted to Crop Yield method and numbers of crops which could be taken after reasonable provision for deduction of costs in question. These are only illustrative factors and the list is not exhaustive. The attempt of the Court of Law therefore always is to find out the exact or nearer to exact market price of the land or price which is in the

vicinity of the market price so that land owner is not denied the just equivalent of the price of his land. This being the objective of Reference under Section 18 of the Land Acquisition Act 1894, the court of law shall have to approach the matter from a different point of view. The matter is not to be treated as a dispute between two rival parties or adversaries. In fact, it is ascertaining claim of one party only because his property is acquired. What can be the market price of the land can be ascertained by various methods. The court can by applying appropriate method, determine the market price. In such process, both the claimants as well as the acquiring authority may assist the court, but, the anxiety of the court should be to see that the market price or just equivalent to market price is provided to the owner of the property. The court of law therefore should eschew the same technical approach or approach of finding fault with the claimant and shutting down his evidence where the evidence made ultimately help the court in reaching a just conclusion. It is possible for the court to ultimately reject such evidence or to reject the explanation which the claimant may give for not accepting the particular sale instance as a comparable sale instance.

5. In view of the aforesaid approach which is required to be adopted by the Courts of law while deciding the Land Reference Cases, too technical approach should be avoided and it would have been just and proper for the court to permit the claimants to prove the aforesaid document by examining witnesses. It will be also open to the opponents to produce further evidence against the evidence which is now sought to be produced by the claimants.

6. In view of the aforesaid, the judgment and order of the Second Extra Assistant Judge, Vadodara in both the aforesaid Land Reference Cases are quashed and set aside and the claimants are permitted to lead evidence of the witnesses and the Court is directed to issue witness summons accordingly with further liberty to the opponents to lead further evidence in support of their case. Rule is accordingly made absolute in each Civil Revision Application. No costs.
